

**Agenda for Telephonic Interview  
August 13rd, 2004, 2:00 PM EST  
Application 10/042,489**

**I. High-Level Discussion of Applicants' Invention**

- Applicants' invention estimates service oriented labor costs using **Service Levels**. Applicants' are their own lexicographer in defining the term "service level," which is defined in the specification. For example, one level of service is when a customer requests a product or service on the same day of his request. Another level of service is when a customer requests a product or service within one week of his request. (page 9, lines 23-26). Per MPEP 211.01, applicants may be their own lexicographer as long as the meaning assigned to the term is not repugnant to the term's well know usage. Applicants use various terms in their claims that are defined in the specification and do not have a well-known meaning.
- Applicant generates multiple labor rates by service levels for each single labor rate using various service levels. A single labor rate is based upon job description or skill level, such as "senior technician."

**II. High-Level Discussion of Cooney Patent**

- Cooney uses various labor rates to calculate labor costs. Cooney's labor rates are the same as Applicants' single labor rates in that they are based upon job description or skill level, such as "senior technician."

**III. Claims 1 Rejection Discussion**

- Cooney does not teach or suggest using a service level as claimed by Applicants and defined in Applicants' specification.

**IV. Claim 2 Rejection Discussion**

- Applicants are their own lexicographer for three specific terms in claim 2:
  - i. Utilization index by service level: Defined in Applicants specification (page 12, lines 19-28).
  - ii. Overtime index by service level: Defined in Applicants specification (page 14, lines 5-20).
  - iii. Labor index by service level: Defined in Applicants specification (page 10, lines 11-18).
- Fad uses overtime rates to calculate labor costs. This is different than Applicants' overtime index by service level in that fads overtime rates are just overtime rates for a particular labor rate. Applicants' overtime index by service level is based upon a max rate mix plan and an overtime labor factor by service level (which is based upon a service level).
- Cooney never teaches or suggests a utilization index by service level or a labor index by service level as defined by applicants.

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• **Comments:**

Examiner Borissov, attached are proposed agendas for our telephonic interview that is scheduled on August 13<sup>th</sup> at 2:00PM EST to discuss application 10/042,489.

Regards,

Scott Schmok